

STATE OF WISCONSIN CIRCUIT COURT BR. 7 WAUKESHA COUNTY

REDELLEN ROAD NEIGHBORHOOD
ASSOCIATION, INC., ("RRNA"), et al,

Plaintiff,

-vs-

Case No. 10 CV 5341
MOTION HEARING

WISCONSIN DEPARTMENT OF
NATURAL RESOURCES,

Defendant.

NORTH LAKE MANAGEMENT
DISTRICT, et al,

Petitioners,

Case No. 12 CV 1751

-vs-

STATE OF WISCONSIN DEPARTMENT
NATURAL RESOURCES,

Respondent.

Proceedings held in the above-entitled matter
on the 14th day of November, 2012, before the **Honorable**
J. MAC DAVIS, Circuit Court Judge presiding in Circuit Court
Branch 7, Waukesha County Courthouse, Waukesha, Wisconsin.

Gail M. Villwock
Official Court Reporter

COPY.

APPEARANCES:

ATTORNEY WILLIAM C. GLEISNER III, 300 Cottonwood Avenue, Suite 3, Hartland, WI 53029, appearing on behalf of Reddelien Road Neighborhood Association, Inc., et al.

ATTORNEY J. STEVEN TIKALSKY, 300 Wisconsin Avenue, #200, Waukesha, WI 53186, appearing on behalf of Reddelien Road Neighborhood Association, Inc., et al.

ATTORNEY WILLIAM H. HARBECK, of Counsel, appearing on behalf of Reddelien Road Neighborhood Association, Inc., et al.

ATTORNEY DIANE L. MILLIGAN, P.O. Box 7857, Madison, WI 53707-7857, appearing on behalf of the Defendant, Department of Natural Resources.

1 TRANSCRIPT OF PROCEEDINGS

2 THE COURT: I'll call Reddelien Road
3 Neighborhood Association, Inc. and others versus
4 Department of Natural Resources, Case 2010 CV 5341.

5 I'll also call North Lake Management
6 District and others versus Wisconsin Department of
7 Natural Resources, Case No. 2012 CV 1751. The
8 appearances, please.

9 MS. MILLIGAN: Your Honor, appearing on
10 behalf of the State of Wisconsin Department of Natural
11 Resources, Assistant Attorney General Diane Milligan.

12 MR. GLEISNER: Your Honor, appearing on
13 behalf of the Reddelien Road Neighborhood Association,
14 Attorneys Gleisner, Harbeck, and Tikalsky.

15 THE COURT: Do you represent the North Lake
16 Management District as well?

17 MR. GLEISNER: No, your Honor. In your
18 administrative consolidation order you said whenever
19 one case was up the other should come up.

20 THE COURT: Yup.

21 MR. GLEISNER: I don't believe they're
22 involved in this particular matter.

23 THE COURT: Who is their representative?

24 MR. GLEISNER: Mr. Gallo.

25 THE COURT: Gallo, okay. Did somebody

1 notice him of this proceeding? Well, the idea of
2 having them come up together is that everybody would
3 know what is going on in both cases, etcetera.

4 In any event, we're here because --

5 MR. GLEISNER: I did let him know
6 informally, Judge.

7 MS. MILLIGAN: And, your Honor, the motion
8 hearing notice was copied to him as well.

9 THE COURT: Okay, good. That's useful.
10 We're here because Reddelien Road Neighborhood
11 Association filed a pleading entitled: The Petition
12 for Resumption of Judicial Review Following 227.57
13 Remand, and they've briefed that.

14 The Department of Natural Resources has
15 filed a brief in opposition, and accompanying with
16 that argument a Motion to Dismiss.

17 And then there was additional briefing,
18 which I've had a chance to review.

19 So, I'm going to start with you, Mr.
20 Gleisner, to highlight, or add, or explain anything
21 further about your request and any response you want
22 to make. And we'll do all of it together since the
23 *Motion to Dismiss* is I guess you would say responsive
24 or a decisive motion saying why you should not be
25 allowed to resume your judicial review, it's all the

1 same issue apparently. So, Mr. Gleisner?

2 MR. GLEISNER: Thank you, Judge. A judicial
3 review was commenced in this case back on
4 December 20th, 2010 and the DNR moved to dismiss that
5 original petition. The Court found it had
6 jurisdiction and conducted judicial review on
7 April 29th, 2011 and denied the motion.

8 The Court entered an order to that effect on
9 August 11th. No appeal was taken.

10 At a hearing on December 12th, 2011 this
11 Court stated: "The DNR Review in granting the permit
12 is without any substantial record or any meaningful
13 record, or any meaningful way for me to review
14 anything". So before I could conduct a judicial
15 review to order a remand pursuant to 227.57 (7) for
16 the purposes of developing a record, this Court stated
17 that: "It's the absence of a record that leads the
18 Court to take this step".

19 This Court did not in any way at any time
20 relinquish the jurisdiction it found to exist on
21 July 29th, 2011. Instead, on December 12, 2011 it
22 expressly retained jurisdiction "in case either side
23 is dissatisfied with the outcome" of the remand.

24 We think it's important to emphasize that
25 this Court could not conduct a judicial review because

1 there was no record. However, it was and is clear
2 that the Court intended to complete a judicial review,
3 and that the remand was for the purpose of enabling
4 the Court to do so.

5 Your Honor, the -- I'll move along as
6 quickly as I can. The Court made very clear on
7 December 12, 2011 that it was acting under 227.57 (7)
8 which reads in part: "If the agency's action depends
9 on facts determined without a hearing it may remand
10 the case to the agency for further examination and
11 action within the agency's responsibility".

12 There is little judicial gloss on the
13 statute. The one case which most directly addressed
14 this statute was *R.W. Docks*, 145 Wis 2d 854, where the
15 Court stated: "DNR argues that 227.57 (7) should not
16 be read to give the Court blanket authority to remand
17 in all cases decided without a hearing. The
18 Department offers no authority for its assertion. And
19 while the intent of the statute is rather puzzling to
20 say the least, its language is plain and unambiguous.
21 The Court has broad discretion to remand so that the
22 facts may be ascertained and developed".

23 Nothing in 227.57 (7) limits the authority
24 of the Court as to how it will actually execute a
25 remand. Or, whether the Court has the authority to

1 retain jurisdiction after a remand has been effected.

2 The cases cited by the DNR such as *Gimenez*
3 did not directly address 227.57 (7), and as I said
4 there is little gloss on that statute.

5 Your Honor, we also note that the DNR now
6 raises an objection to the retention of jurisdiction,
7 although it clearly had ample opportunity to do so at
8 an earlier point.

9 1. It could have objected at the hearing on
10 12/12/11. It did not.

11 It could have objected to this provision at
12 the same time it objected to other provisions in the
13 January 2012 order submitted under the five-day rule.
14 It did not.

15 It could have sought an interlocutory appeal
16 of the 1/6/12 order. It did not.

17 It could have objected when we informed the
18 Court and counsel we would be asking the Court to
19 resume jurisdiction in the July 23rd letter. It did
20 not. When the DNR --

21 THE COURT REPORTER: I'm sorry, when the DNR
22 --

23 MR. GLEISNER: I apologize. When the -- it
24 could have objected when we informed the Court and
25 counsel we would be asking the Court to resume

1 jurisdiction in a July 23rd letter to the Court. It
2 did not. Was that when I -- okay. Thank you.

3 When the RRNA filed its 8/3/12 Petition for
4 Resumption of the Judicial Review it could have
5 immediately filed an objection. It did not.

6 Instead, it gave one day's warning that it
7 might file the present motion which it did after the
8 deadline --

9 THE COURT REPORTER: I'm sorry, what was
10 that?

11 MR. GLEISNER: I'm sorry, I apologize.
12 Instead, it gave one day's warning that it might file
13 the present motion, which it did after the deadline
14 erroneously set in the ALJ's decision.

15 The DNR remained completely silent as to the
16 Court's retention of jurisdiction for over eight
17 months.

18 The DNR now suggests this Court can clarify
19 what it meant when it chose to retain jurisdiction
20 suggesting the Court's order was somehow vague and
21 ambiguous.

22 But we submit that the DNR is not seeking a
23 clarification and is asking this Court to rule that
24 its own completely proper order was invalid. There is
25 no need for this Court to clarify anything. The

1 Court's order could not have been clearer. The Court
2 retained jurisdiction over this matter for "purposes
3 of judicial review of the remanded proceedings once
4 they are completed".

5 It is obvious what the DNR had to gain by
6 filing this motion. The result of a dismissal means
7 significant facts and issues relating to the DNR's
8 issuance of a storm water permit to itself will never
9 be subject to this Court's public scrutiny.

10 The purpose of the remand was to develop a
11 record. The DNR's specific failure to comply with
12 certain key aspects of NR 103 was not known and could
13 not have been known until the record was at long last
14 developed, which established the failure to do an NR
15 103 analysis for the first time.

16 The bottom line, if the DNR had raised the
17 issue of retained jurisdiction with the Court at the
18 time of the December, 2011 hearing, or the Court's
19 January, 2012 order, or at any time within the
20 following eight months, this issue could have been
21 resolved ahead of time. Instead, the DNR sat on its
22 hands and waited until it was too late for D-N-R to do
23 anything about it -- the R-R-N-A, excuse me, I
24 apologize.

25 THE COURT REPORTER: The R-R-N-A?

1 MR. GLEISNER: R-R-N-A, I'm sorry, I
2 apologize. I'm just trying to move along. I
3 apologize.

4 This is where the *Trempeleau* case comes in,
5 your Honor. That case addresses the fundamental
6 concepts of subject merit jurisdiction and judicial
7 competency. According to that case the statutory
8 limits on the Court's ability to hear a case go to the
9 Court's competency. As *Trempeleau* also makes it
10 clear, the terms of competency when a party sleeps on
11 its rights it can waive those rights.

12 To kick the RRNA out of court is to permit
13 the DNR, when the -- when the RRNA relied upon and was
14 doing exactly what the Court's order told it to do,
15 would arguably be patently unjust.

16 For those reasons, your Honor, and for the
17 reasons set forth in our brief, we respectfully submit
18 that the DNR's motion should be denied. Thank you,
19 your Honor.

20 THE COURT: Thank you. Attorney Milligan?

21 MS. MILLIGAN: Thank you, your Honor. Mr.
22 Gleisner's argument is premised on an initial argument
23 that there was no record of DNR's initial decision.
24 There wasn't anything to review and that's why we
25 ended up -- the Court ended up remanding the case.

1 But the record of the initial decision was
2 166 pages long. There -- it was, the record,
3 everything in the DNR staff person's possession when
4 he made the decision that was initially challenged.

5 Mr. Gleisner then argues that it's difficult
6 to misinterpret 227.57 (7), that there is little gloss
7 on this section.

8 But if you look at the entire 227.57 section
9 you'll see that there is much more to it than that.

10 And the *Barnes* case does a very good job
11 explaining the process that the Court goes through
12 when it does its review. It's -- it starts page --
13 excuse me, 306 of 178 Wis 2d.

14 The reviewing court has two remedies
15 available to it. The petitioner has met his or her
16 burden.

17 1. If the facts compel a particular action
18 as a matter of law the Court must set it aside, modify
19 it, or order the agency to take some specific action.

20 Or, 2, if the facts do not compel a
21 particular action as a matter of law, the Court may
22 remand the case to the agency for further examination
23 and action within the agency's responsibility.

24 It starts out with a burden on the part of
25 the petitioner to show that that 166 page record

1 didn't compel a particular action, or not. That
2 was -- that was a question that the Court would look
3 at first before it determined whether or not it would
4 remand the case.

5 We have already argued about remand, and
6 or, yes, we already argued about remand and the Court
7 determined to remand the case.

8 The parties never argued about whether it
9 was appropriate for the Court to retain jurisdiction
10 on any part of the case before or after the remand.

11 The petition for judicial review that began
12 this case --

13 THE COURT: Doesn't that amount to an
14 argument that I should strike part of my January, 2012
15 order that because you're saying since it wasn't
16 argued it's not supported, I should now find I
17 shouldn't have done it, and I should go back and
18 vacate that provision?

19 MS. MILLIGAN: Yes, your Honor. I'm -- I
20 believe it's appropriate, if the Court chose to retain
21 jurisdiction over the issues that were not remanded
22 the Court has that right.

23 But once it remanded three of the six issues
24 the Court's order was a final order as to those
25 issues.

1 It was an interlocutory order as to the
2 case, there was still matters in litigation. So
3 unlike, contrary to Attorney Gleisner's argument we
4 could not have appealed it. It wouldn't -- I could
5 have, I guess he is suggesting I should have
6 interrupted the Court when it was issuing its oral
7 ruling about retaining jurisdiction. Or I should have
8 objected --

9 THE COURT: Everybody else interrupts me,
10 you could have, I guess. But I'm not encouraging it.

11 MS. MILLIGAN: We didn't sit on our hands
12 for eight months. Nothing happened for eight months.

13 The Court remanded three issues to the DNR
14 for a contested case hearing. The decision in that
15 case came out on July 18th of this year and that
16 decision contained a Notice of Appeal Rights advising
17 that any person aggrieved by that decision is entitled
18 to do judicial review in accordance with 227.52 and
19 227.53, which requires the petitions for judicial
20 review be filed to the Court and served upon the
21 secretary of the DNR within 30 days. The notice
22 advises people to closely examine the statutes because
23 strict compliance with its provisions is required.

24 On August 3rd, that was the next time a
25 pleading was filed in this court, and in that R-R-N-A,

1 I'm going to call it the Neighborhood Association,
2 filed a petition with this Court asking the Court to
3 resume its review in this case and stated it had
4 narrowed the issues to be reviewed from the six
5 original issues to just two issues. One of those
6 issues was one of the original six. The second issue
7 was this NR 103 issue that he was arguing a little bit
8 about today. That was not in the original petition
9 for judicial review, it's a new issue.

10 We filed this motion because RRNA has
11 narrowed the issues by eliminating several issues that
12 weren't in its initial petition -- sorry, those are, I
13 was just trying to quote them. None of those issues
14 that were not remanded remained in this case. So, we
15 ask that the initial case be dismissed.

16 Their first argument that we waived our
17 objection to the Court's retaining jurisdiction
18 mischaracterizes the *Mikrut* case and it mis portrays
19 the facts. The Neighborhood Association complains
20 that DNR didn't tell it it should have filed a
21 petition for judicial review of ALJ's decision in time
22 for it to do anything about it.

23 First, it's not DNR's job to tell them what
24 to do, they have plenty of lawyers who are intelligent
25 people and know what they're doing.

1 Second, DNR did tell the Neighborhood
2 Association, it appended a Notice of Appeal Rights to
3 the decision that it issued. And I told them two days
4 before the deadline, the 30-day deadline, even though
5 I was under absolutely no obligation whatsoever to do
6 so.

7 Regarding timeliness, the parties agreed
8 that the whole idea, the whole issue of retaining
9 jurisdiction didn't come up until the Court issued its
10 oral ruling last December.

11 And once again, I -- it wasn't appropriate
12 to interrupt the Court as it was ruling. We were
13 memorializing the Court's order when we were agreeing
14 to the language of the order and took it straight from
15 the transcript.

16 Attorney Gleisner argues that I should have
17 filed something when he wrote a letter to the Court
18 last summer. Or I should have filed something sooner
19 after his petition was filed in August. I filed
20 something 17 days later, which is pretty quick I think
21 for lawyers.

22 Regarding the law, the Neighborhood
23 Association misapplies waiver law. *Mikrut* provides
24 that parties must generally raise challenges to a
25 Circuit Court's competency other than those challenges

1 related to statutory time limits before the Circuit
2 Court, not for the first time on appeal.

3 Here, DNR has respectfully raised the
4 argument before this Court that Section 227.57 doesn't
5 provide for the Court to retain jurisdiction over
6 issues remanded pursuant to that section. An
7 appellate court cannot consider this argument waived.

8 The Neighborhood Association includes a
9 block quote from *Mikrut* explaining the policy behind
10 the waiver rule. But it selectively omits some of the
11 words and phrases from that quote.

12 The entire quote makes it clear that the
13 purpose is to encourage parties to raise issues before
14 the trial court rather than the Court of Appeals so
15 that the trial court rather than the Appellate Court
16 can address them. And that's why DNR respectfully
17 requested the Court clarify, or state, or restate, or
18 reconsider that it was retaining jurisdiction over the
19 remanded issues until the remand proceedings were
20 concluded and that it didn't intend to retain
21 jurisdiction over those issues after the ALJ
22 subsequently addressed them.

23 The Court had retained jurisdiction over the
24 other three issues that were not remanded. But the
25 Neighborhood Association no longer seeks review of

1 those issues. That's why what is left of the initial
2 case must be dismissed.

3 The parties both spent a little time on the
4 *Soo Line* and the *Gimenez* cases. As it explained in
5 *Gimenez* these cases require that Reddelien Road's
6 petition for resumption of judicial review be
7 dismissed.

8 These two cases provide that a court may
9 only retain jurisdiction post remand when it orders
10 that additional evidence be taken by the agency
11 under Wisconsin Statute Section 227.56 (1), not when
12 it remands under 227.57. *Soo Line* involved a remand
13 under 227.56 (1). And *Gimenez* involved a remand under
14 227.57 just like this case. Dr. Gimenez had filed a
15 petition for judicial review of the agency's post
16 remand decision, but he had not served the agency in a
17 timely fashion. He argued that the Court had just
18 deferred review until a modified decision was produced
19 just like in *Soo Line*.

20 The Court of Appeals rejected this argument
21 stating the *Soo Line* exception to the Section 227.53
22 service requirements applies only to cases involving
23 227.56 where additional evidence is to be considered.

24 The Court went on to explain that 257.56 (1)
25 specifically requires that the modified finding of

1 decision be filed with the reviewing court.

2 227.57 does not state that subsequent
3 decisions -- that the subsequent decision shall be
4 filed with the reviewing court.

5 The *Gimenez* case explains in order to retain
6 review of the Board's modified decision Dr. Gimenez
7 had to properly file and serve a new petition for
8 judicial review under 227.53. That is because a
9 remand order under 227.57 is a final order. And the
10 cite there is *Van Domelon versus Industrial Commission*
11 --

12 THE COURT REPORTER: *Van Domelon* versus?

13 MS. MILLIGAN: *Industrial Commissioner*.

14 THE COURT REPORTER: How do you spell it?

15 MS. MILLIGAN: Two words, V-A-N
16 D-O-M-E-L-O-N. And the cite is 212 Wis. 22, not Wis.
17 2d, plain old Wisconsin.

18 This case is just like *Gimenez*. To obtain
19 judicial review of the ALJ's decision Reddelien Road
20 had to properly file and serve a new petition for
21 judicial review under 227.53. It filed a petition but
22 it did not properly file it as a new and separate
23 action, and it did not properly serve it. So just
24 like Dr. Gimenez its petition must be dismissed.

25 The Court clearly intended to retain

1 jurisdiction when it issued its January 6th, 2012
2 order and issues still remain in litigation, so that
3 was not a final order.

4 But since Reddelien Road has abandoned the
5 issues that were not remanded there are no issues
6 remaining in litigation before this Court.

7 Therefore, DNR respectfully requests the
8 Court issue a final order dismissing Case No. 10 CV
9 5341. Thank you.

10 THE COURT: Thank you. I'm prepared to
11 rule. I'm going to deny the Department of Natural
12 Resources' Motion to Dismiss and allow the matter go
13 forward on remand as requested by the petitioner in
14 this matter by reasoning as follows:

15 First of all, the Court explicitly retained
16 jurisdiction and without limit in its order from
17 earlier this year.

18 The Court had that authority, 227.57 (7)
19 makes it pretty explicit, and I find sub (9)
20 instructive. I also find *Soo Line* convincing and the
21 appellate case distinguishable.

22 I'm going to read sub (9). The Court's
23 decision shall provide whatever relief is appropriate
24 irrespective of the original form of the petition. If
25 the Court sets aside agency action, or remands the

1 case to the agency for further proceedings, it may
2 make such interlocutory order as it finds necessary to
3 preserve the interest of any party and the public
4 pending further proceedings or agency action.

5 The wording in there makes it clear that
6 when it's remanded the Court continues to have
7 authority. You can't have an interlocutory order if
8 there has been a final order. An interlocutory order
9 is only granted when a case is pending. So that
10 implies it continues to pend.

11 But, further, the sentence goes on to say:
12 Pending further proceedings or agency action, by
13 making a distinction there it is clear that agency
14 action cannot be considered further proceedings for
15 purposes of this section of the statutes.

16 So, sub (9) makes it explicit when there has
17 been a remand that the matter continues to pend for
18 further proceedings, which is exactly where we find
19 ourself today.

20 I'll also find it is not necessary in my
21 decision, but I'll find additionally in the alternate
22 the DNR did waive their complaint about this by virtue
23 of what has or hasn't happened in the intervening
24 number of months.

25 And this whole argument of abandonment, I

1 don't find that dispositive. But in any event, I
2 decline to find that the petitioners have abandoned
3 certain arguments yet.

4 I'll especially, having in mind the language
5 of that statute, irrespective of the original form of
6 the petition that seems to apply that with respect to
7 these remand proceedings that the Court is not going
8 to be deciding a person's rights based on exactly how
9 they filed, or the form of their petition.

10 I'll also rule that the NR 103 review is an
11 appropriate issue to be considered here. It appears
12 to be a predicate to the general permit being
13 challenged.

14 And there being no record before, there is
15 nothing to appeal from, or to be more explicit then to
16 challenge the overall action.

17 I'll analogize this, this is very similar to
18 a circuit court or other matters where pleadings are
19 required where the affected party chooses to plead
20 more particularly when they discover more particulars.
21 So, I'll allow that to be part of the overall
22 challenge at this point.

23 You'll have to draft the Court's ruling on
24 these matters, Mr. Gleisner.

25 MR. GLEISNER: Yes, your Honor.

1 THE COURT: Now, unless there is some
2 question about that we should talk about the
3 further progress of the case.

4 MR. GLEISNER: Your Honor, we're going to
5 need a transcript in this particular case.

6 THE COURT: Have you got any idea or
7 feedback when you might be able to get that?

8 MR. GLEISNER: Yes, your Honor, they told
9 me, and Ms. Milligan can certainly correct me, the
10 last we communicated on this eight weeks, and I would
11 ask her for an update because that's the last I heard.

12 THE COURT: Eight weeks from?

13 MR. GLEISNER: The date that it's ordered,
14 Judge.

15 THE COURT: Has it been ordered yet?

16 MS. MILLIGAN: We had a correspondence
17 right after the last hearing in this court, and the
18 Department of Administration indicated it could
19 provide tapes and CD's right away. But it -- there
20 are 520 pages of transcripts that they estimated would
21 take somebody eight weeks to transcribe. And Attorney
22 Gleisner decided he didn't want to order that and pay
23 for it prior to this hearing. And so nothing has
24 happened. We haven't --

25 THE COURT: So the boil down it hasn't been

1 ordered. So when somebody orders it it will be eight
2 weeks. So we're not going to be doing anything around
3 here for at least eight weeks plus.

4 MR. GLEISNER: I'm sorry, Judge. Yes. Yes.

5 THE COURT: So I was thinking about maybe I
6 should set a status, you know, 10, 12, 14 weeks out
7 with the idea it could be by phone so you don't have
8 to travel. And then people could tell me, yup, we
9 just got a transcript and now when we've seen it we
10 propose this briefing schedule, or that matter of
11 proceeding, or this argument. Or, you know, hey,
12 let's be realistic, 14 weeks out we might hear,
13 whoops, it didn't get done yet, but they're telling us
14 another week or another six weeks.

15 MS. MILLIGAN: Your Honor, could I suggest
16 we have a status conference sooner? We could check
17 with DOA next week, or tomorrow and find out how far
18 it is out, and then we can plan from there?

19 THE COURT: I could do that. But I'm not
20 quite convinced because that means for sure we'll have
21 one or two. Because all you're going to get is an
22 estimate a week or two from now.

23 If we set it out 14 weeks and you get better
24 information the two of you can talk to each other and
25 authorize one or the other to write me a letter or

1 call my clerk and say, we're not going to be ready by
2 then, push it out another month. Or, we think we're
3 going to be ready, can you move it up. And then the
4 clerk will get on the phone with both of you and you
5 can move it. Would that be okay?

6 MR. GLEISNER: That's good, Judge.

7 MS. MILLIGAN: That works for me as well,
8 your Honor. But I would like to perhaps file
9 something prior to then just to disengage these two
10 cases. Because if nothing will happen with this case
11 for another four months the other case was -- it was,
12 you had issued a briefing schedule back in late
13 summer.

14 THE COURT: So you think that one can go
15 ahead now? And you don't want it to languish, is that
16 it?

17 MS. MILLIGAN: That's right, your Honor.

18 MR. GLEISNER: May it please the Court?

19 THE COURT: We don't have their
20 representatives here so I'm not going to do anything
21 on that. But you're free to, I don't know, I can have
22 the clerk set a status conference for that one. Or
23 you can bring a motion, either one, to try and change
24 the path of it. And then get -- hear their point of
25 view, as well as Reddelien's point of view.

1 MS. MILLIGAN: I would like to do that, your
2 Honor, I would like to file a motion so everyone can
3 weigh in instead of trying to do it on the phone.

4 THE COURT: Okay, then you can just, when
5 you have your motion you can fax it or mail it to my
6 clerk, and then get on the phone with her and the
7 others and pick a date. So, in the ordinary -- we can
8 give you motion dates next week, two weeks,
9 three weeks, whenever you're ready, whatever you want.

10 So I'm going to look down my calendar
11 roughly three months for a status on the Reddelien
12 case. And I was planning to goof off a little bit
13 during that time period. So either we'll have to do
14 it at the end of January or later in February. Do
15 people care, or?

16 MR. GLEISNER: No.

17 MS. MILLIGAN: I would prefer end of January
18 just in case we can get something in that eight-week
19 timeframe.

20 THE COURT: Sure. January 28th is a Monday.
21 February 1st is a Friday. Either one of those are
22 okay with me.

23 MS. MILLIGAN: They both work for me as
24 well.

25 MR. GLEISNER: As well.

1 THE COURT: Let's make it February 1st in
2 the morning at 9:15, it's just a status. You want to
3 appear by phone, Attorney Milligan?

4 MS. MILLIGAN: Yes, your Honor.

5 THE COURT: Before you leave you can get the
6 phone number from the clerk to call in that morning.

7 Are you going to appear by phone, Mr.
8 Gleisner, or? You can decide later. I'm just making
9 sure you know that is fine with me.

10 MR. GLEISNER: I appreciate that, Judge.
11 May it please the Court, just very briefly, we do
12 believe that these two cases are tied together because
13 of the NR 103 finding.

14 THE COURT: I'm certainly not thinking one
15 way or another, and so we'll get a motion in front of
16 us. And then the other representative will be here,
17 North Lake's Management District, and then everybody
18 can talk to me about it.

19 MR. GLEISNER: Thanks, Judge.

20 THE COURT: So I can make another appealable
21 ruling for you.

22 MR. GLEISNER: You haven't done that yet,
23 Judge.

24 THE COURT: Oh, they're all appealable. All
25 right, thank you all.

1
2

(Hearing concluded)

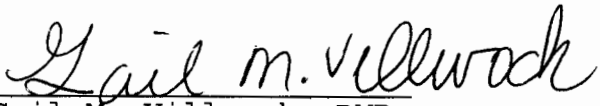
STATE OF WISCONSIN)

) SS

COUNTY OF WAUKESHA)

I, Gail M. Villwock, Official Court Reporter for Br. 7 Waukesha County, State of Wisconsin, do hereby certify that the foregoing transcript is a true and correct transcription of my stenographic notes reported on said date, to the best of my belief and ability.

Dated this 21st day of November, 2012.


Gail M. Villwock, RMR